

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tahreem Khan	Team: Squad #11	CCRB Case #: 202000106	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/05/2020 6:00 PM	Location of Incident: Bryant Avenue and East 172nd Street	Precinct: 42	18 Mo. SOL 7/5/2021	EO SOL 2/19/2022	
Date/Time CV Reported Sun, 01/05/2020 10:16 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 01/05/2020 10:16 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fitz Edouard	04802	956616	042 PCT
2. POM Sandy Nunez	10829	956134	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Alexander Velasquez	4729	942659	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sandy Nunez	Abuse: Police Officer Sandy Nunez stopped § 87(2)(b)	
B.POM Fitz Edouard	Abuse: Police Officer Fitz Edouard refused to provide his name to § 87(2)(b)	
C.POM Fitz Edouard	Abuse: Police Officer Fitz Edouard refused to provide his shield number to § 87(2)(b)	
D.POM Sandy Nunez	Abuse: Police Officer Sandy Nunez refused to provide his name to § 87(2)(b)	
E.POM Sandy Nunez	Abuse: Police Officer Sandy Nunez refused to provide his shield number to § 87(2)(b)	
F.POM Fitz Edouard	Abuse: Police Officer Fitz Edouard issued a summons to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

## Case Summary

On January 5, 2020, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On January 5, 2020, § 87(2)(b) was walking along Bryant Avenue and East 172<sup>nd</sup> Street in the Bronx, when a plainclothes officer in an unmarked vehicle said to him, “Yo” to get § 87(2)(b)'s attention. § 87(2)(b) backed away from the vehicle, thinking the occupants may be gang members. Once officers opened their vehicle doors, § 87(2)(b) feared for his life and ran in the opposite direction and ducked behind a vehicle. § 87(2)(b) was soon approached by Police Officer Sandy Nunez, Police Officer Fitz Edouard, and Sergeant Alexander Velasquez, all of the 42<sup>nd</sup> Precinct. PO Nunez asked § 87(2)(b) where the guns and drugs were (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Edouard and PO Nunez refused to provide their names and shield numbers to § 87(2)(b) (**Allegations B – C: Abuse of Authority**, § 87(2)(g)). **Allegations D – E: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) alleged that after he asked the officers for their names and shield numbers, § 87(2)(b) was issued a summons for disorderly conduct (**Allegation F: Abuse of Authority**, § 87(2)(g)). § 87(4-b) § 87(2)(g)

§ 87(2)(b) was issued a summons for § 87(2)(b).

The NYPD provided four positive results for Body-Worn Camera (BWC) footage for this incident: PO Edouard, Sgt. Velasquez, Police Officer Steven Vargas, and PO Macciel Restituyo. Only PO Edouard and Sgt. Velasquez's BWC captured a portion the incident at Bryant Avenue and East 172<sup>nd</sup> Street in the Bronx. PO Vargas and PO Restituyo's BWC were activated at the 42<sup>nd</sup> Precinct stationhouse and did not capture anything of substance. There were negative results for PO Nunez's BWC as it was allegedly not working during this incident.

On August 21, 2020, this case has been reassigned from Investigator William McClure to the undersigned investigator following Inv. McClure's resignation from the agency.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Police Officer Sandy Nunez stopped § 87(2)(b)

§ 87(2)(g)

There is no video footage that captures the beginning of the incident or this allegation.

At approximately 6 p.m. on January 5, 2020, § 87(2)(b) (Board Review 1) was walking along Bryant Avenue and East 172<sup>nd</sup> Street in the Bronx when a dark unmarked sedan with tinted windows with three officers dressed in plain clothes drove up next to him. An officer from the vehicle rolled down his passenger's side window a quarter of the window someone said, “Yo” to get § 87(2)(b)'s attention. As § 87(2)(b) could not see the inside of the vehicle, he did not know that the individuals inside were police officers. § 87(2)(b) thought that the occupants of the vehicle might be gang members who were trying to kill him. § 87(2)(b) ran in the opposite direction that the vehicle was traveling in, passed a bystander, and told him to run as well.

§ 87(2)(b) ducked behind a vehicle as the officers were catching up to him. PO Nunez, PO Edouard, and Sergeant Velasquez approached § 87(2)(b). Once he observed that they were wearing their bulletproof vests and had BWCs, § 87(2)(b) stood up and told the officers that he did not know who they were, which is why he ran. In response, PO Nunez asked § 87(2)(b) where the guns and drugs were. § 87(2)(b) stated that he did not have any guns or drugs.

PO Nunez (Board Review 2) testified that he, PO Edouard, and Sgt. Velasquez were driving around Bryant Avenue which is an area known to have the following conditions: a lot of crimes, gang members, drug sales, firearms and shots fired. PO Nunez indicated that he has made multiple arrests in this area. PO Nunez and PO Edouard looked towards the sidewalk, made eye contact with § 87(2)(b) who then grabbed his waistband and ran in the opposite direction that the vehicle was traveling in. PO Nunez has been working anti-crime for three years and found § 87(2)(b).

§ 87(2)(b) grabbing his waistband to be suspicious. In his experience, when someone does this action, it is possible that they have something like a weapon. PO Nunez did not mention observing a bulge around § 87(2)(b)'s waistband. § 87(2)(b) ducked behind a vehicle, which made his behavior even more suspicious to PO Nunez. PO Nunez believed that § 87(2)(b) knew that he and his colleagues were officers because he too grew up in a similar neighborhood and he knew who a police officer was and who a gang member was, and he assumed § 87(2)(b) did too. Once PO Nunez and PO Edouard approached § 87(2)(b) PO Nunez asked him what his name was and told him to stand up. § 87(2)(b) stood up, refused to provide his name, and became very disrespectful towards the officers by yelling and cursing at them. Although PO Nunez could not recall what § 87(2)(b) was saying, he recalled § 87(2)(b) having an "I don't care, I don't give a ..." attitude. PO Nunez tried to explain to § 87(2)(b) why he was stopped, but § 87(2)(b) continued to yell and curse, not giving PO Nunez an opportunity to speak and did not listen to PO Nunez. PO Nunez did not recall asking § 87(2)(b) where the guns and drugs were.

PO Edouard (Board Review 3) and Sgt. Velasquez (Board Review 4) corroborated PO Nunez's observation about § 87(2)(b) grabbing the front of his jacket and/or his waistband area, running from the officers, and ducking behind a vehicle, but did not recall observing PO Nunez ask § 87(2)(b) where the guns and drugs were.

People v. De Bour, 40 NY2d 210 [1976]), ruled that officers may stop and forcibly detain an individual if there is reasonable suspicion of crime, whether that person has committed a crime, is currently committing a crime, or will commit a crime (Board Review 14).

According to People v. Ingram, 114 A.D.3d 1290, 980 N.Y.2d 653 (2014), if innocuous or harmless behavior is found to have occurred in a high crime area, then that behavior alone would not provide an officer with a reasonable suspicion that the defendant is committing a crime (Board Review 16).

People v. Kreichman, 37 N.Y.2d 693 (1975) noted that while flight at the approach of a police officer may suggest criminality, flight is only a slight value of guilt that bears no value unless there are facts pointing to a motive that caused it. Only flight should not be weighed heavily as flight may be motivated by factors other than guilt (Board Review 17).

As stated in People v. Sainz-Mantilla, 129 A.D.3d 508 (2015), states that in order to justify pursuit after flight, there must be evidence that the police officers were clearly identifiable, or that the defendant recognized the police officers as members of law enforcement (Board Review 18).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Fitz Edouard refused to provide his name to § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Fitz Edouard refused to provide his shield number to § 87(2)(b)**

PO Edouard's BWC footage (Board Review 5), captures non-exhaustive portions following this incident. At the 00:18 mark, § 87(2)(b) states, possibly to a bystander, "I tried to get their badge numbers so they're trying to arrest me right now." § 87(2)(b) made this statement again at the 00:24 mark. At the 04:06 mark, § 87(2)(b) stated, "I want both y'all badge number. Both y'all in the front seat bro." PO Edouard responded, "You'll get everything. Don't worry about it. You'll get it." § 87(2)(b) who appeared to be speaking to PO Nunez and PO Edouard, then said that when he asked for the officer's shield numbers, "shit got real" and said something that is not fully audible. PO Nunez stated that he was not scared of that. § 87(2)(b) responded, "you gonna be bro."

§ 87(2)(b) (Board Review 1) stated that after he refused to provide his identification, the officers told § 87(2)(b) that he could leave. At this point, § 87(2)(b) pointed at PO Nunez and PO Edouard and stated that he wanted both of their names and shield numbers. PO Edouard responded, "You know what, I'm sick of this. Let's just take him in." PO Nunez asked § 87(2)(b) "Why do you want my name and badge number? I didn't ask for your ID. I still don't know your name and your information." § 87(2)(b) told the officers that they were basically kidnapping him because he did not know who they were. § 87(2)(b) was then handcuffed and taken to the station house. § 87(2)(b) stated that he did not receive any officer's information. He did, however, state that he was issued a summons but did not see who wrote it.

PO Edouard (Board Review 3) noted that § 87(2)(b) continued to yell throughout the incident and only calmed down at the station house. He recalled § 87(2)(b) asked for officers' names and shield numbers at some point but did not recall when. PO Edouard noted that if § 87(2)(b) asked for that information prior to reaching the station house, then it would have been difficult to provide as § 87(2)(b) was yelling at the officers until they reached the station house. PO Edouard did not refuse to provide his name and shield number to § 87(2)(b). Prior to releasing § 87(2)(b) from the station house, PO Edouard issued him a § 87(2)(b) summons (Board Review 6), showed § 87(2)(b) where his name and tax registry number were, and verbally stated his name and shield number to § 87(2)(b).

Neither PO Nunez (Board Review 2) nor Sgt. Velasquez (Board Review 4) observed PO Edouard refuse to provide his name and shield number to § 87(2)(b).

Officers should clearly provide their name, rank, shield number and command to anyone who requests it. NYPD Patrol Guide Procedure 203-09 (Board Review 7).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Sandy Nunez refused to provide his name to § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer Sandy Nunez refused to provide his shield number to § 87(2)(b)**

As noted above, PO Edouard's BWC from IA 32 (Board Review 5) shows that § 87(2)(b) directly asked for PO Nunez's name and shield number. The BWC also showed that § 87(2)(b) was handcuffed in the back seat of the vehicle, but also cursed and yelled at the officers throughout the car ride while he was speaking to PO Nunez.

§ 87(2)(b) (Board Review 1) stated that when he asked for PO Nunez and PO Edouard's names and shield numbers, PO Edouard responded by stating that he is going to take § 87(2)(b) to the station house and PO Nunez asked why § 87(2)(b) needed the information.

PO Nunez (Board Review 2) initially did not recall § 87(2)(b) asking for his name and shield number. After reviewing the BWC in IA 32, PO Nunez stated that he heard § 87(2)(b) ask the officers in the front seat [PO Nunez and PO Edouard] for their names and shield numbers. PO Nunez stated that he did not refuse to provide his name and shield number to § 87(2)(b). When § 87(2)(b) requested the information, he was still "going off." PO Nunez did not want to rile § 87(2)(b) up again, causing a commotion inside of the vehicle like there was on the street. At the station house when § 87(2)(b) was calmer, PO Nunez explained the reason of the stop to § 87(2)(b). At the end of that interaction, PO Nunez provided his name, his shield number, the years he has been with NYPD, and the history of where he grew up to § 87(2)(b) and told him to reach out if he had any questions or hears anything in the neighborhood regarding a crime as he could be saving someone's life.

PO Edouard (Board Review 3) noted that PO Nunez spoke with § 87(2)(b) at length in the holding cell area, which is when § 87(2)(b) had calmed down. PO Edouard did not recall seeing PO Nunez refuse to provide his name or shield number to § 87(2)(b).

Sgt. Velasquez (Board Review 4) did not observe PO Nunez refuse to provide his name to § 87(2)(b). Instead, PO Nunez tried to provide it, but § 87(2)(b) would not let him speak. Sgt. Velasquez did not observe PO Nunez refuse to provide his shield number to § 87(2)(b).

While there is BWC footage of this incident, it does not capture the entire incident of when the interaction with § 87(2)(b) started and when § 87(2)(b) was released from the station house. A portion of this incident with the allegation is captured within BWC and PO Nunez did not provide his name and shield number when requested but noted that § 87(2)(b) was still yelling throughout the car ride. PO Nunez stated that he provided his name and shield number at the end of his interaction with § 87(2)(b).

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer Fitz Edouard issued a summons to § 87(2)(b)**

§ 87(2)(b) (Board Review 1) stated that when PO Nunez was frisking him, he began to scream after the PO Nunez “cupped” § 87(2)(b) s genitals. § 87(2)(b) screamed because he felt violated. At this point, one other individual came to record the incident. PO Edouard had gone to speak to this witness, came back to § 87(2)(b) and “cupped” his genitals as well. § 87(2)(b) stated that he became infuriated because he did not know why they chased him and why they violated him by touching his genitals. The officers told him that they were about to let him go and asked for § 87(2)(b) s identification. § 87(2)(b) refused to provide his identification and reiterated that the officers did not tell him anything about the interaction. The officers then told § 87(2)(b) that he was free to go, which is when he asked the officers asked for their names and shield numbers. PO Edouard responded, “You know what, I’m sick of this. Let’s just take him in.” § 87(2)(b) was then taken to the 42<sup>nd</sup> Precinct station house and issued a summons by PO Edouard for § 87(2)(b).

PO Edouard (Board Review 3) explained that after § 87(2)(b) refused to provide his identification and the officers did not find anything near the area where § 87(2)(b) was hiding, he and the other officers were finished with the interaction and proceeded to walk back towards their vehicle. § 87(2)(b) continued to yell, curse, wave his arms around, and walked towards the officer’s vehicle. At this point, onlookers began to gather, probably to see what was happening. There were 2 - 4 individuals towards the north of the officers and one individual to the south of the officers. The officers did not interact with any members of the crowd. PO Edouard believed that § 87(2)(b) was primarily speaking to the officers. § 87(2)(b) was within a foot’s distance of PO Nunez when the officers believed that it would be safer to issue § 87(2)(b) a summons at the station house as he was continuing to yell. Although PO Edouard did not recall whose decision it was to take § 87(2)(b) to the station house, PO Edouard did recall saying that he was going to “bring him in.” PO Edouard did remember § 87(2)(b) asking for the officers’ names and shield numbers but was not sure if § 87(2)(b) asked for this information prior to arriving at the station house. In the event that § 87(2)(b) did ask before reaching the station house, he stated that it would have been difficult to provide that information as § 87(2)(b) continued to yell and speak over the officers until he calmed down at the station house.

PO Nunez (Board Review 2) corroborated PO Edouard’s statement regarding § 87(2)(b) yelling at the officers and causing a crowd to gather. As § 87(2)(b) refused to provide his identification, the officers needed to take § 87(2)(b) to the station house to identify him and issue him a summons for disorderly conduct.

Sgt. Velasquez (Board Review 4) noted that when PO Edouard and PO Nunez approached him, § 87(2)(b) began asking the officers questions, but would not provide them the opportunity to answer those questions. As the officers disengaged, and returned to their vehicle, § 87(2)(b) began to follow the officers in a threatening manner by screaming and cursing at the officers. § 87(2)(b) began asking for PO Nunez or PO Edouard’s names and shield numbers. The officers issued § 87(2)(b) commands to back away, but he did not comply. Given that a crowd was forming, and § 87(2)(b) was becoming dangerous to the officers, the officers thought that § 87(2)(b) could have attacked them at any point considering § 87(2)(b) s behavior throughout this incident. The officers made a collective unspoken decision that they would take § 87(2)(b) to the station house and issue him the summons there.

§ 87(2)(g)

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§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been a party to one other CCRB complaint and has been named as a victim in two allegations (Board Review 9).
  - § 87(2)(b)
- PO Nunez has been a member of service for seven years and has been a subject in four other CCRB complaints, none of which have been substantiated.
- PO Edouard has been a member of service for six years and has been a subject in two other CCRB complaints, none of which have been substantiated.

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this case.
- As of March 16, 2021, no Notice of Claim request regarding this incident was filed with the Office of the New York City Comptroller (Board Review 10).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 11

Investigator:	<u>Tahreem Khan</u>	<u>Inv. Tahreem Khan</u>	<u>December 17, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Edwin Pena</u>	<u>IM Edwin Pena</u>	<u>12/17/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date